

MODEL VETERANS TREATMENT COURT RULES

Proposed New Arizona Rule of Criminal Procedure 36

A. Short Title. The provisions of this rule may be cited as the Model Veterans Treatment Court Rules.

B. Definition. In this rule:

- (1) “Defendant” means a veteran or servicemember charged with a criminal offense.
- (2) “Domestic violence” means conduct defined in A.R.S. § 13-2601.
- (3) “Participant agreement” means the record, required by paragraph (D)(1), of the policies and procedures of a veterans treatment court and any specific terms and conditions applicable to the defendant. The term includes a modification under paragraph J.
- (4) “Record,” except as otherwise provided in paragraph (G)(1)(b), means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (5) “Servicemember” means:
 - (A) a member of the active or reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States; or
 - (B) a member of the National Guard of the United States; or
 - (C) a member of the Arizona National Guard.
- (6) “Sign” means, with present intent to authenticate or adopt a record:
 - (A) to execute or adopt a tangible symbol; or
 - (B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(7) “Veteran” means a former servicemember, regardless of the character of the servicemember’s discharge.

(8) “Veterans treatment court” means a veterans and servicemembers case administered under this rule by a court of this state.

C. Authorization.

(1) A court with jurisdiction in a criminal case may administer a veterans treatment court.

(2) A veterans treatment court may adjudicate misdemeanors and felonies, within the limits of the specific court’s jurisdiction.

(3) A defendant eligible to participate in a veterans treatment court under paragraph (G)(1) may be admitted to the veterans treatment court at any stage in a criminal proceeding.

D. Records of Policies and Procedures.

(1) A veterans treatment court shall create a record of policies and procedures adopted to implement this rule.

(2) A veterans treatment court shall seek input from prosecution and defense counsel and other interested persons in developing and adopting policies and procedures to implement this rule.

E. Key Components of Veterans Treatment Court.

(1) A veterans treatment court shall adopt policies and procedures to implement the following key components:

(a) integrating alcohol-treatment drug-treatment, and mental-health services with justice-system case processing;

(b) using a nonadversarial approach in which prosecution and defense counsel

promote public safety while protecting due-process rights of defendants;

(c) identifying eligible defendants as early as feasible;

(d) providing access to a continuum of alcohol-treatment, drug-treatment, mental-health treatment, and other related treatment and rehabilitation services;

(e) monitoring defendants for abstinence from alcohol and drugs by frequent testing;

(f) directing a coordinated strategy that responds to each defendant's compliance;

(g) providing ongoing judicial interaction with each defendant;

(h) monitoring and evaluating the achievement of goals;

(i) continuing interdisciplinary education to promote effective veterans treatment court planning, implementation, and operations; and

(j) forging partnerships among the veterans treatment court, the United States Department of Veterans Affairs, the Arizona Department of Veterans' Services, other public agencies, and community-based organizations to generate local support and enhance the effectiveness of the veterans treatment court.

(2) In adopting policies and procedures under this rule, the veterans treatment court shall consult nationally recognized best practices related to the key components.

F. Supplemental Policies and Procedures of Veterans Treatment Court.

(1) A veterans treatment court may adopt supplemental policies and procedures to:

(a) refer a defendant with a medical or medication need to an appropriate health-care provider;

(b) refer a defendant to other available services, which may include assistance

with housing, employment, nutrition, and education;

(c) provide a defendant access to mentor who is a servicemember or veteran;

(d) integrate intervention, treatment, and counseling, as part of the rehabilitative services offered to a defendant who has been a victim of domestic violence, sexual trauma, child abuse, or other trauma;

(e) confer with the victim or alleged victim of the domestic violence offense that serves as the basis for the defendant's participation in the veterans treatment court;

(f) evaluate and assess a defendant charged with a domestic violence offense and integrate specific counseling as part of the rehabilitative services for the defendant;

(g) monitor a defendant charged with a domestic violence offense to assure compliance with a domestic violence protection order, no-contact order, and prohibition on weapon possession; and

(h) otherwise assist the veterans treatment court.

(2) In adopting policies and procedures under this rule, the veterans treatment court shall consult nationally recognized best practices related to these components.

G. Eligibility.

(1) A defendant is eligible to participate in a veterans treatment court if:

(a) the defendant has a mental-health condition, traumatic brain injury, or substance use disorder or other condition, injury or disorder deemed appropriate by the originating court, in the discretion of the court, to participate in the veterans treatment court;

(b) the defendant agrees on the court record to enter the veterans treatment court voluntarily and adhere to a participant agreement;

(c) the defendant's participation in the veterans treatment court would be in

the interests of justice and of benefit to the defendant and the community, as determined by:

(i) the prosecutor and the originating court, with regard to pretrial diversion; or

(ii) the originating court, with regard to all other matters.

(2) In making the determination under subdivision G(1)(c), the prosecutor and the originating court shall consider:

- (a) the nature and circumstances of the offense charged;
- (b) special characteristics or circumstances of the defendant;
- (c) the defendant's criminal history and whether the defendant previously has participated in a veterans treatment court or a similar program;
- (d) whether the defendant's needs exceed treatment resources available to the veterans treatment court;
- (e) the impact on the community of the defendant's participation and treatment in the veterans treatment court;
- (f) recommendations of any law-enforcement agency involved in investigating or arresting the defendant;
- (g) special characteristics or circumstances of the victim or alleged victim;
- (h) subject to subdivision G(3), a recommendation of the victim or alleged victim;
- (i) provision for and the likelihood of obtaining restitution from the defendant over the course of participation in the veterans treatment court;
- (j) mitigating circumstances; and
- (k) other circumstances reasonably related to the defendant's case.

(3) In making the determination under subdivision G(1) and G(2) in a case in which a domestic violence offense serves as the basis for the defendant's participation in the veterans treatment court, the prosecutor and the originating court shall seek the recommendation of the victim or alleged victim of the offense.

H. Participant Agreement. For a defendant to be admitted to a veterans treatment court, the defendant must sign, and the originating court must approve, a participant agreement. If admission to the veterans treatment court occurs before conviction, the prosecutor must also sign the participant agreement.

I. Victim of Domestic Violence.

(1) If a victim or alleged victim of a domestic violence offense that serves as the basis for the defendant's participation in a veterans treatment court can reasonably be located, the victim or alleged victim must be offered:

- (a) referrals to services of domestic violence providers; and
- (b) information on how to report an allegation of:
 - (i) an offense committed by the defendant; or
 - (ii) a violation by the defendant of the participant agreement.

(2) The participation of the defendant in a veterans treatment court does not alter the rights of a victim or alleged victim of domestic violence under law of this state other than this rule.

J. Modification or Termination. If a veterans treatment court determines after a hearing that a defendant has not complied with the defendant's participant agreement, the originating court may modify or terminate the defendant's participation in the veterans treatment court. Modification or termination is subject to the participant agreement.

K. Completion of the Participant Agreement. If the veterans treatment court determines that a defendant has completed the requirements of the defendant's participant agreement, the originating court shall dispose of the charge that served as the basis of participation in the veterans treatment court in accordance with the defendant's participant agreement and any applicable plea agreement, court order, or judgment.

L. Access to Records.

(1) A statement made or record submitted by a defendant in a veterans treatment court may be subject to 42 U.S.C. Section 290dd-2, and 42 C.F.R. Part 2, as amended, regarding confidentiality.

(2) Any individually-identifiable health information or record pertaining to a defendant in a veterans treatment court undergoing alcohol or drug treatment may be subject to the privacy regulations promulgated under the Health Insurance Portability and Accountability Act, 42 U.S.C. Section 1320d-6, as amended, and 45 C.F.R. Parts 160, 162, and 164, as amended, and any corresponding state law provisions.

M. No Right to Participate. This rule does not create a right to participate in a veterans treatment court.